

UTILITIES DIVISION[199]

Notice of Intended Action

Proposing rule making related to procedure for determining competitiveness and providing an opportunity for public comment

The Utilities Board hereby proposes to amend Chapter 5, “Procedure for Determining the Competitiveness of a Communications Service or Facility,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 474.5 and 476.2.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 476.1D, 476.2 and 546.7.

Purpose and Summary

The Board is conducting a comprehensive review of its administrative rules in accordance with Iowa Code section 17A.7(2). The purpose of this proposed rule making is to update and amend Chapter 5 of the Board’s rules establishing procedures for determining the competitiveness of a communications service or facility pursuant to Iowa Code section 476.1D.

The Board issued an order commencing rule making on January 23, 2019. The order is available on the Board’s electronic filing system, efs.iowa.gov, under Docket No. RMU-2016-0021.

Fiscal Impact

After analysis and review, the Board tentatively concludes that the amendments will have no effect on the expenditure of public moneys within the state of Iowa.

Jobs Impact

After analysis and review, the Board tentatively concludes that the amendments will not have a detrimental effect on employment in Iowa.

Waivers

No waiver provision is included in the proposed amendments since the Board has a general waiver provision in rule 199—1.3(17A,474,476) that provides procedures for requesting a waiver of the rules in this chapter.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Board no later than 4:30 p.m. on March 5, 2019. Comments should be directed to:

Iowa Utilities Board
Electronic Filing System (EFS) at efs.iowa.gov
Phone: 515.725.7337
Email: efshelpdesk@iub.iowa.gov

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend rule 199—5.1(476) as follows:

199—5.1(476) Purpose. These rules govern the procedure for investigating and determining the applicable level of regulation ~~under Iowa Code Supplement section 476.1D~~ for a communications service or facility pursuant to Iowa Code section 476.1D.

ITEM 2. Amend subrule 5.2(1), introductory paragraph, as follows:

5.2(1) Petitioner. Any interested person may petition the board for a determination of the following under Iowa Code ~~Supplement~~ section 476.1D.

ITEM 3. Amend subrule 5.2(2), introductory paragraph, as follows:

5.2(2) Contents of petition. A petition for a determination under subrule 5.2(1) shall ~~substantially comply with the form prescribed in 199—subrule 2.2(1), except that references to rule making shall be replaced by references to the service or facility sought to be evaluated. In addition, the petition must contain or be submitted with the following information:~~

ITEM 4. Rescind subrule **5.2(3)**.

ITEM 5. Amend subrule 5.3(1) as follows:

5.3(1) Order. If the petitioner has complied with subrule 5.2(2), the board ~~may~~ shall issue an order docketing the matter as a formal notice and comment proceeding. ~~At any time the board may initiate a formal notice and comment proceeding on its own motion. At any time, the board may also on its own motion initiate evidentiary hearings to develop a reliable record of facts related to the issues raised and to allow discovery to the extent the board deems necessary. The petition will not be deemed to be an application for new or changed rates, charges, schedules or regulations and setting a procedural schedule.~~

ITEM 6. Rescind subrule 5.3(2) and adopt the following **new** subrule in lieu thereof:

5.3(2) Responses. Any person, including the consumer advocate, wanting to file a response to a petition must do so within 30 days of the filing of the petition or as otherwise directed by the board in its order docketing the matter.

ITEM 7. Rescind subrule **5.3(4)**.

ITEM 8. Rescind rule 199—5.4(476) and adopt the following **new** rule in lieu thereof:

199—5.4(476) Comments. All comments shall be sworn and shall be filed within 30 days after publication of notice of the proceeding in the Iowa Administrative Bulletin unless otherwise directed by the board. Reply comments may be allowed at the discretion of the board. Comments shall be filed electronically unless otherwise allowed by the board.

ITEM 9. Rescind rule 199—5.5(476) and adopt the following new rule in lieu thereof:

199—5.5(476) Formal proceeding. The board may schedule an oral argument, evidentiary hearing, or other formal proceeding as appropriate to allow all interested persons the opportunity to address the issues raised in the petition and any comments filed with the board. All persons filing comments will be required to appear at any formal proceeding that may be held. If the board holds an evidentiary hearing, all persons filing comments shall have at least one witness available who may be cross-examined about the subject matter of the comments.

ITEM 10. Rescind rule **199—5.8(476)**.